ondary to the Laws.

BUSINESS IN THE OTHER COURTS.

Divorce Suit and Question as to the County Jurisdiction of Children - Important Horse Suits-Commissioner Charlick's Action for Libel.

Yesterday the United States Circuit Court Grand Jury found a bill of indictment against Charles A. Austin, master of the American vessel Inginac, who is charged with having cruelly beaten and ill used some of the men of his crew. Other indicti have also been found; but as the parties therein mentioned have not yet been arrested their names, under a rule of the Court, are withheld.

An application was made yesterday in the United States Circuit Court, before Judge Nathaniel Shipman, on behalf of Mr. Isaac H. Bailey, as receiver of the Commonwealth National Bank, of this city, for an order empowering him to sell, either by public or private sale, and to the highest bidder, the banking house and all the personal and real estate of the bank in question. The order was granted. It states that if the property mentioned be sold at private sale it must be disposed of sub-ject to the sale being confirmed by the Court.

Commissioner Shields has discharged from custody a man named Joseph Kendall, who had been committed about a month ago in the United States Circuit Court, before Judge Benedict, on a charge of sending an obscene article through the mails, and sentenced to pay a fine of \$250. Kendali, not being able to pay the fine, and having suffered thirty days' imprisonment, was liberated under the act of 1872, which provides for cases of this char-

Commissioner Osborn discharged Mary Cronen and Johanoah Crimmens, who had been charged with passing a \$50 counterfelt bill. It was conceded that Johannah had passed the note, not

knowing it to be a counterfeit. Yesterday, in the matter of Jacob M. Duncan and Simon Poev vs. The steamer Francis Wright, Judge Blatchford rendered a decision refusing an application made on behalf of the libeliants for a rehearing. The libeliants desired to present evidence on a point on which, they stated, the deci. cision of the Judge turned when he rendered judgment, some time since, that the libel must be di missed. The Judge says the case is presented as merely one of oversight, and he does not think that a retrial in such a case, in an admiralty suit, ought to be allowed. An appeal will give a retrial in the Circuit Court, and there the omitted evidence can be adduced.

#### THE INTERNAL REVENUE LAW.

An Important Question Affecting Assessments-Decision by Judge Nathaniel Shipman.

Yesterday, in the United States Circuit Court. Judge Nathaniel Shipman rendered his decision in the case of James Barker vs. William B. White. The action in this case was brought to recover \$3,773. This amount of money was paid under protest to the defendant, who had been Collector of the Sixth district. Under the act of July 20, 1868, the plaintiff took out a license as a distiller, and in the months of October, November and December, 1868, and February, 1869, he presented to the Assessor the returns as required by law. On these returns an assessment was made and sent to the Collector, and the Diaintif paid the amount of the assessment. In July, 1869, the Assessor, following the instructions of the Commissioner of Internal Revenue, made a reassessment for the months already specified. This reassessment increased the first assessment to the sum of \$3,773. This amount, as above menioned was paid under protest. The case came on reassessment for the months already specified. This reassessment increased the first assessment to the sum of \$3.772. This amount, as above mentioned, was paid under protest. The case came on for trial in the United States Circuit Court, before Judge Nathaniel Shipman. Mr. Goodlett, United States District Attorney, appearing for the government and Mr. Thomas Harian for the plaintiff. On the trial it was conceded that the returns made by the plaintiff were correct, and that the assessment proceeded upon the supposition—a belief of the Commissioner of Internal Revenue—that the original assessment, as made upon the returns, was erroneous in consequence of a mistake made by the Collector. The Collector gave proof of the assessment, but did not offer any testimony as tending to show wherein the imputed error in the original assessment consisted. Two questions have arisen on these facts—(1) When the taxpayer has made a correct return and the assessor, under the law, power to make a supplementary assessment? (2) Is the reassessment proof on the part of the government that there was an error in the original assessment. The decision of Judge Shipman on these points in favor of the plaintiff. He decides the first point in the affirmative provided that the assessor makes the supplementary assessment within the time (fifteen months) stated in the ninth section of the act of July 13, 1866. The Judge answers the second question in the negative. estion in the negative.

# THE EXHUMATION CONTROVERSY.

The Congregation Shearith-Israel in Difficulties-The Tenets of the Orthodo Secondary to the Laws of the Land-An Interesting Case Decided. Before Judge Barrett.

The congregation Shearith-Israel, of Fifth ave

who may desire to purchase them. The sale is not of the fee, but only grants an exclusive privilege of interment to the purchaser, which privilege upon his death descends, by the terms of the agreement, to the "next of kin." Under this regulation one Barrow Benrimo became the owner of plot No. 104, in which several of his relatives were buried by his consent. He aled, relatives were buried by his consent. He died, leaving a widow and one child, an infant, for whom Mr. S. Isaacs is guardian. He also left a mother and brothers and sisters. Lately a child of his sister died, and upon request of his parents, but without the consent of the minor child or her guardian, the trustees permitted the body to be intered in plot No. The Learning for the infraction of the my trustees permitted the body to be intered in plot No. The Learning of the infraction of the my trustees permitted the body to be intered in the Goard for consultation. The plaintin, Daniel Bearimo, was then a member of the Board and urged his colleagues not to comply with the request, but to stand a suit. Judge Candopon and the selected to his statement of the law; but still by a tiev one, a resolution to distinct was defended. Thereupon Judge Cardopon, being unwilling to involve the synagogue in a litigation, resigned, by letter, his position in the Board.

Lopon this the President called on the guardian and, learning that a treepass had been committed and process, he again convenion to the law; but shown the section of the law; but shown to be extended who, with the excellent called on the guardian and, learning that a treepass had been committed an injunction in the Supreme Court, Chambers, before Judge Barriot, to prevent the disinterment. But the complaint said nothing about the fact that the sole not of kind of Barriow Bernino was his infant gatile and the suprement of the complaint said nothing about the fact that the sole not of kind of Barriow Bernino was his infant gatile. Shanish their tenes to remove the cannot a body when once interred in the complaint said nothing about the fact that the sole not of kind of Barriow Bernino was his infant gatile sagnist their tenes to remove the cannot all the complaint said nothing about the fact that the sole not the suprement of the proper submission to its believes in a doctine of prompt submission to its believes is a doctine of prompt submission to its believes is a leaving a widow and one child, an infant, for whom Mr. S. Isaacs is guardian. He also

THE COURTS.

Important Question Affecting Internal Revenue Assessments.

The EXHUNATION CONTROVERSY.

The Congregation Shearith-Israel as an Orthodox Body—Dogmas Sec.

BUSINESS IN THE OTHER COURTS.

SUP EME COURT-SPECIAL TERM.

A District Court Civil Judge After His Salary. Before Judge Van Brunt.

Anthony Hartman vs. The Mayor, &c.-The plaintiff, who is a Judge of one of the District arrearages of salary at \$10,000 per annum. The the salary to \$5,000 and then raised it to \$8,000. The plaintiff demars to the answer and cistum that the charter cannot affect the salary of the plaintiff, wao is a Judga. A. Oakey Hall argued in support of this theory that the Civil Justices never were component parts of the local government of New York, and in an act to reorganize it could not be constitutionally embraced. He traced the history of the District Courts from colonial times through a multiplicity of acts. Mr. D. J. Dean, for the corporation, contended that he very salary claimed by plaintiff was fixed by a similar local act; that if the act of 1873 was unconstitutional then that of 1871, giving the \$10,000, was equally bad. Some discussion followed upon the titles; one being to make "provision" for the government—a recent statute; the other, to "reorganize" the government. Decision was reserved. the salary to \$5,000 and then raised it to \$8,000

#### SUPREME COURT-CHAMBERS.

Interesting Divorce Suit and Question as to Juradiction of Children.

Before Judge Barrett. Ferdinand Mayer and Eleanora Mayer were married in May, 1846, at Portchester, N. Y. They have had thirteen children, ten of whom are living, six being still minors. Some time since Mrs. Mayer brought suit for a limited divorce on the her amdavit that Mr. Mayer has repeatedly treated her with violence, and threatened to murder her and the younger children and then commit suicide. She also alleges that he is given to habits of drunkenness and threatens to dispose of his property, abandon her and go to Germany. The children, she says, are now at a "peasants' inn" in Germany, where she cannot see them. She asks sufficient maintenance for herself and children, setting forth that he owns a house and lot in Brookiyn, valued at \$15,000, and \$70,000 employed in a hithographic business in this city. Mr. Mayer makes a general demai of her allegations, excepting as to property, which, he says, has been considerably reduced through the present litigation. He declares that he is anxious for a peaceful separation, and some time ago he proposed to her to sell his property, settle one-third of it on her and the rest on the children. His younger daughters, he says, are now in the Ursuline Convent, in the Black Forest, and being well educated and cared for. The case came up in Court yesterday on a motion to bring these minor children within the jurisdiction of the Court. After an extended argument by Mr. Kauffman for the motion and Mr. Beneville in opposition, Judge Barrett took the papers, reserving his decision. her with violence, and threatened to murder her

Decisions. By Judge Barrett.

Benrimo vs. Congregation Shearith-Israel.—Motion to continue injunction denied and temporary injunction dissolved, with \$10 costs.

Starin vs. Weizel.—Motion granted, and \$10 costs to abide the event.

McLaury vs. Mille.—Motion denied, with \$10 costs. Costs.
Opdyke vs. Proritz, Rogers vs. Justh.-Memorandums.
In the Matter of De Forest.—Report confirmed and order granted.
The People ex rel. Ferguson vs. Green.—Motion denied.

SUPERIOR COURT-TRIAL TERM-PART I Suit to Recover Money Lost on a Horse

Before Judge Spier. Among the multiplicity of races run at the fall meeting of 1871 on the Fleetwood track was a trotting match in harness, best two in three, mile heats, between the sorrel gelding General Sherman, entered by Thomas McGuinness, a gentleman well known among horsemen, and the gray gelding Big Judge, entered by Dennis Luney. Michael Mahoney made the match on behalf of Luney and P. J. McGuinness made it on behalf of Thomas McGuinness. The amount pending on the race was \$500 stake and \$100 side bet. Robert O'Callahan was the stakeholder. In the race Mr. McGuinness' horse won in two straight heats, and to him the stakeholder gave the money, Mr. Tallman, superintendent of the track, who acted as judge, having declared General Sherman the winning norse. Mahoney, to whom Luney assigned his claim, has been a long time trying to get back the lost \$300, he having brought two or three suits to recover the same, but being defeated each time. But Mr. Mahoney has perseverance, and so he continued the litigation, the last in the series of trials thus far taking place yesterday in this Court. The suit was brought under the statute prohibiting betting at horse races. Of course, under this statute, he had only to walk over the track. The defence did not deny the betting and the alleged disposition of the stake by the stakeholder. They attempted to introduce as evidence, but it would not be received, the affidavit of John L. Doty, the well known well known among horsemen, and the gray geld the betting and the alleged disposition of the stake by the stakeholder. They attempted to introduce as evidence, but it would not be received, the affidavit of John L. Doty, the well known horse trainer, as also the affidavits of some dozen others, proving that the horses run were the ones matched and upon which the bets were made; but this proof would have made no difference, the suit, as stated, naving been brought under the gaming law. The testimony was pretry much a repetition of that at the previous trial. Judge Spier, in charging the jury, said that it made no difference whether there was a race or no race. The only question for them to decide was whether a bet was made, whether the money was placed in the hands of the stakeholder, and whether the same was given by without the authority or direction of the plaintiff. The substance of the charge, in short, was that the money could be recovered under the gaming act, and under this charge a verdict for \$351 was given for Mr. Mahoney. On the rendition of the verdict notice of appeal was given. Mr. McChainness expresses his determination to carry this case, if necessary, to the highest courts. He does this on principle and as a test case. Of course the turfmen present expressed without reserve their indignation at the mode pursued in this suit to recover money lost on bets, and say that until a final decision is reached they do not propose to make bets with schoolboys. que and West Nineteenth street, in this city, owns a cemetery on Long Island, part of which is laid out in plots, which the trustees sell to persons

SUPERIOR COURT-SPECIAL TERM. Decisions.

By Judge Sedgwick. Clements vs. Jones.—See decision with Clerk at

Bpecial Term.

Rose vs. Combes.—Order of reference.

By Justice Monell.

Atwood vs. Lynch.—Extra allowance granted.

the fears now emertained in regard to them."
The demurrer denied that these allegations were libellous. John E. Deveits made as exhaustive argument in support of the demurrer, and spoke at length of the duty of the judiciary to help the press to a fearless criticism of public servants. Ex. Mayor Hall, for the plainting, made a simple leral argument, and avoided all the popular issues. He contended upon authority of Sanderson vs. the Sanday Mercury, in 45 New York Appeals Reports, that no judge could take away from a jury the right to pass upon a libel unless it was incapable of an illurious construction to the person defined. He claimed, under the same authority, that a publisher could not vell his meaning under ameiguous phrases and escape action for delamation, with right of jury to pass on the tendency to injure reputation. Decision reserved.

By Judge Robinson.
The People, &c., vs. Miller.—Certified copy of order of dismissal must be provided.
Seward vs. The Pullman Palace Or Company.—Motion denied, \$10 costs. (See memorandum.)

COURT OF GENERAL SESSIONS

The Alleged Larceny of Gold Certificates by a Deputy Sheriff-The Case Ad-journed till Monday.

The trial of William Conklin, an ex-Deputy Sheriff, charged with grand larceny in participating in the alleged theft of three \$5,000 gold certificates from Burr S. Craft, on the isth of December, was resumed yesterday. District Attorney Rollins called Glosu Gianini, the barkeeper at Deimonico's, who testified that Mr. Crait, Mr. Jarvis and others were drinking at the bar; that Judson Jarvis offered to bet Crait he had no more gold certificates about nim, which challenge led to the production of three; that Craft was much under the influence of fiquor, and alter remaining three-quarters of an hour he (Craft) feil down outside the door. The barkeeper at toat time saw Conkin and others around Craft; he sent his young assistant, Joseph Miller, for a policeman. Miller was the next witness. He detailed the circumstances of the falling, and contradicted the previous witness by saying he did not see Conkin near Craft when he fell the second time, he having previously fallen between the doors as he was going out. Officer Hawkey swore that when he was called to take charge of the complamant Conklin assisted him part of the way in taking him to the station house; that he did not see him take anything from Craft; that he had a gold watch and chain, but when searched at the station bouse none of the gold certificates were found. Joseph Hidderrand, a walter, who litted Mr. Craft up the first time he fell, testified that he did not see any money or take any from him.

The Court took a recess of half an hour, after which the prosecuting officer rested his case.

William Conklin, Jadson Jarvis and Lawrence Curry gave their account of the transaction between Mr. Craft at the Sheriff's Office and afterward at Delimonico's, from which it appeared that they did not accept his invitation, but were followed by the complainant, who joined them. White drinking there mether Mr. Jarvis nor Mr. Conklin saw Mr. Craft exhibit any gold certificates. A number of citizens testified to the good character of Conklin. Ex-Judge Cardozo summed up the evidence, chaiming that the revience adduced by the prosecution showed that Conklin was concerned in the larcony of the gold certificates.

The hour being late, the Recorder p 18th of December, was resumed yesterday. Dis-trict Attorney Rollins called Giosa Gianini, the bar-

The Tompkins Square Riot-Sir of the Alleged Rioters Discharged.

Just before the Court adjourned Henry Patter Thomas Oates, John Englehard, Justus Schab and two others, indicted for participating in the alleged riot at Tompkins square, were brought to the bar. As they were too poor to furnish ball, and as the evidence against them was slight, District Attorney Rollins consented to their discharge.

The Recorder let them go on their own recogni-

for Five Years. George A. Millard, who who was tried and conricted of receiving stolen goods, was sentenced to

bered that Miliard was the keeper of the saloon at the corner of Washington and Canal streets where the masked burgiars were arrested. Mr. Townsend moved for a new trial on the ground that the verdict was against the weight of evidence. the state Prison for five years. It will be remem-

His Honor overruled the motion. Grand Larceny.

Philemon J. Tounay, who was charged with stealing a trunk containing clothing, on the 31st of January, belonging to Zavier F. Savurian, pleaded January, belonging to Lavier F. Savurian, pleased guity. It appeared from the complaint that the accused occupied a room with Savurian in Prince street, and stole a pocketbook containing \$40 and keys of the trunk, which was at Castle Garden, of which the prisoner obtained possession. It was, however, recovered in Morton street. Tounay was sent to the State Prison for three years.

A False Pretence Case. Lotz pleaded guilty to obtaining a watch on false pretences. The detendant went to the store of Herman Marcus, in John street, on the 24th of December, and handed him an order for a gold watch, signed by Paul Worth, which he pro-cured from a young man on the stairs of that es-tablishment. He was sent to the Penitentiary for three years.

SECOND DISTRICT COURT.

A Portrait That Was Not a Portrait.

Before Judge Field. Eugene Bertrand vs. Gustav A. Flach.-This case involved the question whether or not a portrait of a little caughter of Mr. David Levy, of East Sixtysecond street, painted by the defendant, a portrait painter, was a good picture, and done according to contract. Mrs, Levy, who assigned her alleged claim to the plaintiff, testified that the defendant agreed to point a first class portrait of her little daughter to her entire satisfaction for \$50: that she paid him \$20 on account thereof, and that the portrait, which was produced in court by the defendant, was not properly executed, and that it did not resemble her daughter, who was produced in Court and exhibited with the portrait, apparently to the delight of the numerous spectators. Another witness testified to the same effect. The action was to recover the sum paid on account, as she refused to pay the balance and take the picture. The defendant testified that the picture was done according to the directions of Mrs. Levy and her husband; that when it was completed they expressed their satisfaction with it, and at their request be made several alterations in the color of the shoes, ribbons, dress and surroundings of the picture, involving considerable extra labor, without any additional charge; and that because he reinsed to keep on making further extensive alterations from time to time she became dissatisfied, refused to take the picture and demanded the return of her deposit. Mr. Doerge and several other artists testified that the portrait was executed in an artistic and workmanlike manner and was a first class picture of the original. The Court evidently took the latter view of the matter, as he promptly rendered a judgment for the defendant. that she paid him \$20 on account thereof, and that

### TOMBS POLICE COURT. A Broadway Burglary.

Before Judge Bixby.

About nine o'clock on Thursday night the wife of the janitor at No. 26½ Broadway told Officer Gilbert, who was on post near Morris street, that bert, who was on post near Morris street, that there were a lot of newspapers pinned against the first floor windows of No. 26%, and she thought it looked suspicious. The officer went to the place and found the door leading to the hallway open. He gave the alarm and entered. In the office occupied by Enoon Ware a safe was found partly opened, and a number of burglars' tools lying beside it. They consisted of a sectional jimmy, a dark lantern, a number of drills and picklocks. The burglars got out at the rear window, but were arrested by Sergeant Lindon and Roundsman Spence, in New street, as they were endeavoring to escape. They gave their names as Charles Fowler and Charles Proctor, painters.

They were taxen before Judge Bixby yesterday and committed without ball. In the building which was entered were a number of business offices, having safes for keeping valuable securities.

Till Tapping.

John Coleman was arraigned on a charge of stealing \$88 75 from Edward Lawton, of No. 337 Washington street. Coleman went into Mr. Lawton's place on Thursday last and asked change for a \$2 bill. While Mr. Lawton was procuring this it is alleged he was robbed of the abovenamed sum by Coleman, who was held in \$2,000 ball to answer.

Young Desperadoes.
Two boys, named Matthew Hughes and John Kenney, were brought up for running away with a horse and wagon valued at \$300, the property of Augustus van Raden, of No. 23 Christopher street. The horse and wagon was for The horse and wagon were found in their possession by Officer Londrigun, of the Fifth precinct.
They were held in \$1,900 bail each.

YORKYILLE POLICE COURT. A Charge of Bigamy.

Before Justice Wandeil. Martin O'Brien was arraigned on a charge of bigamy, preferred against him by Ann Lawior, his first wile, and Elizabeth O'Brien, his second wife. On the 1st inst. Mrs. O'Brien No. 2 obtained a warrant for the defendant's arrost on a charge of assault and battery. Subsequently she made the

acquaintance of wife No. 1. Both are employed as domestics in private inmilies, and, on comparing notes, they discovered that the defendant does nothing for a living and that he had been in the habit of getting money from both since his marriage with them. He was married on the 25th of September, 1878, at Tarrytown, to wife No. 2, and to his first wife December 2, 1872, at St. Michael's church, in this city. The accused was committed for trial, and the complainants were sent to the House of Detention.

Till Tapping. Kate Locke, wife of a baker at No. 343 East Thirtyfourth street, charged a soung man named William Callagnan with till tapping. He was committed for trial in default of bail.

Professional Thieves. Counsel moved for the discharge of Thomas Murphy. James Hoyt, Thomas Moray and Joseph Dock, the alleged protessional thieves. There being no evidence to substantiate the charge against Moray evidence to substantiate the charge against Moray and Dock they were discharged. The other two the Court decided to hold till to-day when, it is asserted, Sergeant Armstrong of the Ninteenth sub-precinct, will show that they were in the pursuit of their calling as alleged car thieves when arrested. Counsel served upon the Court what purported to be a writ of certiorari, to show cause of detention. The writ was, however, worthless, because it had not been signed by the Cierk of the Supreme Court, from which it issued, and before another can be obtained the prisoners will have been either discharged or sent to the Island.

## BROOKLYN COURTS.

UNITED STATES CIRCUIT COURT-CHAMBERS.

The Alleged Conspiracy Case-The Prosecution of Sanborn, Hawley and Vauderwerken-The Defendants Demanding to Know the Specific Charges Against Themselves-Mysterious Insin uations Against the Treasury Department-The District Attorney Falls to Secure the Records in the Case-In teresting Proceedings Yesterday.

Before Judge Benedict. Judge Benedict sat in Chambers yesterday morn ing to hear the arguments on the motion of the counsel for the defence in the case of Sanborn, Hawley and Vanderwerken for a bill of particulars of the District Attorney Tenney opnosed. Messrs. La-rocque and Buchanan also appeared as counsel for

Sanborn and Hawley.

Mr. Tracy submitted the amdavit of Vander werken, claiming that a bill of particulars was necessary in order to enable him to know the sne cific charges against him and to prepare the de fence. Mr. Tracy said be would not make any ar-

gument. Mr. Tenney said that he was ready to go into an argument. The affidavit presented here was entirely general in its nature. It asked for nothing that he was able to discover but matters of evidence, which, of course, was not proper. In the first place he made objection to the af-fidavit, that, if they desired to submit the case upon the pleadings, upon indictment, they should have made their affidavit more specific and not so general. It demanded nothing but simply transactions, overt acts and the means of proof-that is, the papers which are in this case. Mr. Tenney took the position that under the common law the defendants, in a matter of conspiracy, are not entitled to a bill of par ticulars. As he had previously stated, a bill of par ticulars was no surprise at all to him. He knew that in England they had been granted for a long time. This indictment had been found by

time. This indictment had been granted for a long time. This indictment had been found by the Grand Jury, and the District Attorney had no right to place in it snything but what the Grand Jury had placed or authorized to be placed there. A bill of particulars was a finding of the District Attorney and not of the Grand Jury, Furthermore, a bill of particulars limited the prosecution. You could not go outside of a bill of particulars. Now, then, in this case, these defendants were charged with a conspiracy to defraud the government. The offence was a conspiracy, and the prosecution had a right togo into all the overt acts that were committed under that conspiracy, and the prosecution had no right, neither could they be compelled, to furnish a bill of particulars of these overt acts, the particular transactions carried on and the papers under which they were carried on. Mr. Tennoy said he found but two cases where, in a conspiracy, bills of particulars were granted. The first case was found in saventh Carrination and the other in eighth cox's Criminal Cases. In each of these cases, if his memory served him aright, the several defendants were accused of being defrauders. The indictment, however, failed to specify the individuals that had been defrauded, but it set forth that they were certain subjects of the King. In his indictment against Sanborn and others the prosecution slieged that the government had been defrauded, but it set forth that they were certain subjects of the King. In this indictment against Sanborn and others the prosecution slieged that the government, and the means by which that conspiracy had been carried out was a matter of proof for the trial on which these defendants were to be arraigned. The conspiracy was nothing more nor less than an aggravation of that offence, Again, a conspiracy was nothing more nor less than an aggravation of that offence, Again, a conspiracy was nothing more nor less than an aggravation of that offence, Again, a conspiracy had been carried. noting more nor less than an agravation of that coffence. Again, a conspiracy was nothing more nor less than a misdemeanor, and it was perfectly well established that an indictment drawn for misdemeanor when it was laid in the words of the statute was sufficient, and if the defendants or their counsel would examine every count of this indictment they would see that it was drawn in the language of the statute.

was summer, and it the desendants or their counsel would examine every count of this indictment they would see that it was drawn in the language of the statute.

Judge Benedict said that a bill of particulars was allowed when the indictment did not give information as to transactions. He had heard the question before him repeatedly, and he had looked at English cases, and he could see no earthy reason why, when an indictment did not give information as to transactions inquired about, a bill of particulars should not be given. He had not read this indictment; he supposed it was the general indictment; he supposed it was the general indictment following the words of the statue and not giving information of the transactions into which the prosecution were going to inquire.

Mr. Tenney said that this indictment alloged that these parties entered into a conspiracy to defrand the government out of large amounts of money, and that they entered into this conspiracy under a contract made with the Secretary of the Treasury. It went into particulars, stating precisely how the thing was done. It alleged overtacts, going step by step, and he challenged the attorneys of the defendants to produce a case in the books where an indictment of conspiracy was so definite and so specific as the one in this case. It set out, which the prosecution were not obliged to set out, the means employed—that the conspiracy was carried out by means of writings, drafts, certificates and the like. These were the specific means, and that was a question of proof. All this was under the first count for conspiracy. Now, then, the defence asked for the specific transactions in this case. He said here he was willing to give these specific transactions.

Mr. Tracy—That's all we ask.

Mr. Tenney—it is due to me and my office to say that in our indictment we have alleged in the indictment very single overt act we could allege, when we have not been obliged to allege one single overt act. It is perfectly well held that the means by which a conspiracy is ca

ment.

Judge Benedict—Is your indictment for conspiracy to defraud or commit an offence, or both?

Mr. Tenney—To defraud the government and commit an offence. The traud itself is an offence. The indictment is drawn under the conspiracy section—under the acts of May 30, 1867, and July 20, 1868. The defence ask us to furnish a bill of particular transactions. We have set forth turee particular transactions, and those are overt acts.

Mr. Tracy—If those are all you rely upon, then, that is all that is necessary to be said. The counsel has got three counts in which he does set out want any information—we know what they are.

Judge Benedict (to the District Attorney)—Are those the ones you are going into?

Mr. Tenney—Those and all others.

Mr. Tracy—We want to know upon what particular transaction he relies in the first count. The second and fourth counts are specific county on the question of the transactions. They allege the overt act, the presentation of certain fraudulent papers. On those counts we shall ask him (the District Attorney) what papers he is going to allege were false and fraudulent, so that we shall be prepared to show that they were not. The first count?

Mr. Tenney—What do you say about the fifth count?

Mr. Tracy—I don't consider it worth answering. Judge Benedict—Is your indictment for coi

count?
Mr. Tracy—I don't consider it worth answering.
Judge Benedict (to the District Attorney)—You
intend, on the trial, to hold the defendants under
the first count as well as under the second, third
and jourth—you have a general count, and have
made your transactions in the second, third and
fourth specific?

and lourth—you have a general count, and have made your transactions in the second, third and fourth specific?

Mr. Tenney—Yes, sir. We rely upon every count in this indictment. We propose to avail ourselves of every particle of law there is in the case, and every particle of transaction.

Judge Benedict (checking him)—One moment. You have not answered the quesition. I asked you if you intended to prove under the first count any transaction which was not act out, mentioned in the second, third and fourth?

Mr. Tenney—Most assuredly I do, Judge Benedict—Then, why don't you give them notice of what that transaction is?

Mr. Tenney—Because it is not necessary and the law does not require it.

Judge Benedict—Your way is to give them a bill of particulars of that first count, and you may give it as fully or meagreity as you please. That is the way in the Southern District, and the object of it is that, while they know what transaction you are not bound to give them a bill of particulars, which shows them what transaction you intend to prove under the first count, then that is all I shall order.

Mr. Tenney—The books have laid it down that.

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this question of a bill of particulars rests with the discretion of the Court.

Judge Benedict said he did not ask him to say what day they conspired, &c.

Mr. Tebney said they wanted him to set out the estates upon which taxes were recovered and the estates defrauded.

estates defrauded.
Mr. Tracy—Yes, sir; that's the point.
Mr. Tracy—Yes, sir; that's the point.
Mr. Tonney—We have been groping in the dark for some months.
Mr. Tracy (interrupting)—I take it, sir, you have not been indicting citizens without proof.
Mr. Tenney—I went to Washington for—Judge Benedict—I don't care what you went there for. You draw such a bill orparticulars as you think you ought to give. I don't say what it should be. If it is not specific, then let them object to it. If you say you can't—If you say you do not know what the first count reiers to—that is the end of it.

of it.

Mr. Tenney—We don't say so. We have had enough evidence to satisfy twenty-three men.

The District Attorney then essayed again to speak of his Washington trp; but Jrdge Benedict declined to hear him on that point, saying that he did not care what Mr. Tenuey did at the capital. He reiterated what he had said about the bill of particulars.

He reiterated what he had said about the bill of particulars.

Mr. Tenney then insisted that the first count was not a general count. It sets out conspiracy and the modus operands of the conspiracy.

Judge Benedict thought he had better serve a bill under the first count.

Mr. Tenney in timated that the Court made this order without reading the papers in the case.

Judge Benedict replied that he did so on the District Attorney's statement of the first count.

Mr. Tenney (who was, perhaps, a little piqued)—
I ask that a formal order be entered and that a copy be served upon me.

Judge Benedict—Well, I will make the order now. It is ordered that the District Attorney, within five days from this date, furnish the defence with a bill of particulars showing the transactions set forth in the first count of this indictment.

ment.

Mr. Tracy asked that the District Attorney should say what the papers were—the papers mentioned in the indictment—so that the defence could go to the Treasury Department and find Mr. Tenney-If you can get them you can do bet-

them.

Mr. Tenney—If you can get them you can do better than I have.

Mr. Tracy said that this was no question for a stump speech or for casting innuendoes against anybody. He held that before such charges could be put in the indictment there must be some proof of what the representations, or appliances, or writings were. The prosecution might not be able to set out a literal copy of them, but they were bound before the Grand Jury to prove the existence of certain papers, &c., and they were bound to state whether they were verbal or written. The defence could not say but that they were to be confronted by proof of verbal representations, and verbal representations could not, of course, be false paper within the meaning of the statute. The prosecution set up that the defendants committed this fraud by means of presenting false and fraudulent papers, which of itself was a crime, Mr. Tracy did not know whether the defendants were to be confronted with certain vouchers or what the character of the paper was—whether it was a letter written to the Secretary of the Treasury; whether these representations were contained in that letter, by which the Secretary of the Treasury; whether these representations were produced before the Grand Jury. At any rate, the defendants wared to do certain things, or whether it was a bank check, or draft, or certificate of deposit, or bill of credit. It might have been that witnesses were produced before the Grand Jury. At any rate, the defendants wanted to know what it was, and they would be content to be very general on the subject; but they wanted something which would enable them to prepare their defence and know what they had got to meet, so that they would not be surprised on the trial. Mr. Tracy continued his remarks in a similar strain for some time, and as the conclusion time, and at the conclusion

Judge Benedict said that he must look at the
other counts of the indictments, and concluded to

reserve his decision.

The order previously made was not formally set aside, but it was understood that it was to be conaside, but it was understood that it was to be considered as inoperative.
Counsel agreed to wait upon Judge Woodruff to-day to ascertain whether he could try the case.
Judge Benedict said he would be occupied with business in the District Court and could not try the case this month.

CITY COURT-TRIAL TERM. A Nurse's Compensation.

Before Judge McCue. The jury in the suit brought by Mary White against William Albert and Charles Hickman, executors of the estate of Captain Richard Adams for services rendered the wife of deceased as nurse from 1887 to 1872, rendered as verdict for \$6,000 for plaintiff. This is the third time this suit has been that the third time this suit has been that Mary White had been paid in full for the services rendered. The plaintiff claimed \$7,125. On the first trial the jury failed to agree. In April last, when it was tried again, a verdict for \$5,700 was rendered. A new trial was granted, as above stated, with pecuniary advantage to the plaintiff.

COURT OF APPEALS CALENDAR.

ALBANT, Feb. 13, 1874.
The following is the Court of Appeals day calendar for February 16, 1874:—Nos. 110%, 112, 113, 63, 115, 119, 120%, 107.

## ALLEGED NATURALIZATION FRAUD.

A Superior Court Clerk Indicted. Some time ago Edward Brucks, of the Fifteenth Assembly district, was arrested and required to give bail before a United States Commissioner on a charge of having, by fraud, procured a certificate of naturalization for one George Haerie. It seems that Haerie attempted to register as a voter on a naturalization paper purporting to have been issued in 1868 by the Supreme Court of this State. attempt to register declared the certificate to be fraudulent. Haerle, however, expressed the belief fraudulent. Haerle, however, expressed the belief that the certificate was genuine, and then appned to Brucks to see to the matter and procure for him a certificate, with respect to the authenticity of which there could be no doubt. Brucks states that he examined the files of the Supreme and Superior Courts for the purpose of finding the name of Haerle as a naturalized citizen, but the search, as he says, proved to be entirely fruntless. Haerle subsequently presented a naturalization paper purporting to have been issued by the Superior Court, and Brucks was arrested on a charge of having procured this latter paper by fraud. On this charge he was held by the United States Commissioner; but he most indignantly denied that he charge he was held by the United States Commissioner; but he most indignantly denied that he was guilty of any such offence. Recently Mr. Brucks made a statement to the United States Assistant District Attorney, which showed that he (Brucks) had nothing to do with the paper in question. This statement led the government counsel to believe that the offence of issuing the fraudulent document was committed by one James Masterson, a clerk in the Superior Court, who, it is charged, obtained the certificate for Haerle when the latter was not present in Court at the time it was issued, as he should have been, with witnesses, to prove his residence and identity. Yesterday Masterson was indicted on the above charge by the Grand Jury of the United States Circuit Court. He was arrested on a bench warrant, and will be taken before Commissioner John A. Shields for the purpose of giving ball.

## LIGHTING THE STREETS.

Contracts Awarded to the Harlem and Mutual Companies. The Gas Commission met yesterday afternoon, in the Mayor's Office. All the members were present-Mayor Havemeyer, Comptroller Green and

Commissioner Van Nort. The COMPTROLLER moved that the contract for supplying gas to the city lamps and repairing them in the Harlem Gaslight Company's district be awarded to that company, and that the contract

for supplying gas to public lamps in that part of the Metropolitan Company's district which has not been awarded to the Mutual Company be awarded to the Metropolitan, which was adopted.

Commissioner Van Noar moved to reconsider the action of the Commission in awarding the contract to the Mutual Gaslight Company, at \$35 per lamp, and award the contract to the Metropolitan, at \$33.

Mayor HAYEMEYER Said that it would be acting in

Mayor Havembyer said that it would be acting in Mayor Havemeyersaid that it would be acting in bad laith to do so. The Commission had contracted with the Mutual Company to furnish gas at a cost of \$55 per lamp in that part of the Metropolitan district where their pipes are laid. The Metropolitan proposed to furnish gas throughout their whole district at \$57 per lamp, but if any part of the district was awarded to any other company they would charge \$59 per lamp for lighting the rest of the district.

The Comptroller remarked that it would be unjust to the Mutual Company to reschaft the contract awarded them; that it was unfair for the Metropolitan Company to step in and underbid the Mutual's but also bid aiter having knowledge of their propestions.

sitions.

After some further discussion the resolution to resolud was lost, Mayor Havemeyer and Comptroller Green voting in the negative.

CITY AND COUNTY TREASURY. Comptroller Green reports the following disbursements and receipts of the treasury yesterday :-

Total (number of warrants 15, amounting to 3,17,659

From taxes of 1573 and interest.

From taxes of 1573 and interest.

From collection or assessments and interest.

From collection or assessments and interest.

From water rents.

From water rents.

From water rents.

From incenses. Mayor's Office.

From fibers and fibes, district courts.

## THE SIMMONS-DURYEA TRAGEDY.

Opening of the Case for the Prosecution.

All the Testimony for the People Submitted.

Details of the Tragedy as Recited by Eyewitnesses.

The fourth day and really the commencement of the trial of John E. Simmons, the alleged murderer of Nicholas W. Duryea, was entered upon yester-day before Judge Brady in the Court of Oyer and Terminer. As on the previous days, the court room was crowded to its utmost capacity. The prisoner was still accompanied in Court by his wife and child, and betrayed no more anxiety than at any time since the commencement of the trial. All the counsel were prompt in attendance, as usual.

Directly on the opening of the Court District At-torney Phelps began his opening for the prosecution. He commenced by alluding to the importance of the case, involving the life and liberty of the prisoner, and life and liberty of the prisoner, and the Sinaitic law against murder, and the gravity of the duty of the jury, and then briefly stated the facts as understood by the prosecution Duryea, he said, a man under forty years of age, had been associated in business with the priso his senior in the lottery business, owning a Kentucky lottery. Out of that business no consideration should arise in this case against either. Some time prior to this occurrence their partnership had terminated. Duryea seiling out his share. But hard feelings arose, Simmons thinking that, notwithstanding the sale to him, Duryea was trying to gain a share or undermine him in the business and these thoughts culminating in expres the prisoner of strong threats against Duryea that he should not live to enjoy the proceeds of any such bad faith. These threats were, some of them, told to Duryea, who, however, declined to take any precautions. Duryes being accidentally in the city, and having an appointment with a friend named Allen, who had an office under the office occupied by the prisoner, at No. 67 Laberty street, was brought inte his immediate neighborhood. Mr. Allen did not keep that appointment, but left his place before were immediately after seen on the sidewalk in an angry altercation, ending in the ile and a blow by Duryea. They grappied and fell. Duryea was the lighter. The prisoner at first was beneath, but in Duryea. They grappied and fell. Duryea was the lighter. The prisoner at first was beneath, but in the struggle came uppermost, drew a knife and repeatedly stabbed Duryea. The latter cried out to be let up, scarcely able to raise his head, but the prisoner struck again, and with a shudder Duryea fell back dead. As the prisoner called on said, "Now, I've got the best of you." Both had had their ankles broken. The prisoner called on a clerk, who had been standing by, to aid him. He told the police officer who accompanied him to the police station that two men had tried to rob him. He told the surgeon his ankle was broken by a club, but was silent when the surgeon bin. He told the surgeon his ankle was broken by a club, but was silent when the surgeon by a club, but was silent when the surgeon by a club, but was silent when the surgeon by a club, but was silent when the surgeon by a club, but was silent when the surgeon by a club, but was silent when the surgeon by a club, but was silent when the surgeon by a club, but was silent when the surgeon by a club, but was silent when the surgeon him he probably aiready anticipated what the defence would be. He did not propose to deny the iaw of sell-defence. It was founded deeper than the statute law—in the laws of human nature. But that law did not justify the seeking of an affray and the murder of an enemy under cover of a sell-sought quarrel. It did not justify a man, after he had overcome his enemy and the latter was yielding and begging in submission, in resorting to a deadly weapon to take life. The prisoner stood here with every aid that wealth and learning and industry could supply, and that greater aid of the human aympathy which clustered round the man in peril, forgetful of the dead and the sufferings of those who had lost him. He appealed in conclusion to the jury for the faithful, earnest, impartial discharge of their duty in this case, as representatives of the community and as before that dread bar to which all must give account.

EVIDENCE FOR THE PROSECUTI

store and two cellars; the firm was Macy & Jenkins.
Q. Where did you last see Duryea?
Mr. Graham objected to this as an effort to introduce manufactured evidence, but was overruled.
A. On the morning of his death, about hair-past eleven o'clock, in Wall street, opposite New.
Q. Did you make an appointment with him for a subsequent meeting?
Objected to and ruled out.
Examination resumed—I left my office about temminates to six o'clock; I did not again see Duryea living; saw him dead; Simmons had a place of business over our store.
To Mr. Fellows—I am very confident as to the

To Mr. Fellows—I am very confident as to the time I met Duryea; I had known Duryea street or ciphene I met Duryea; I had known Duryea street or ciphene of the method in the half park in the street of the half park in the employ of Hull & Co., in the Swamp; I remember the 16th of December; 1872, I was in the employ of Hull & Co., in the Swamp; I remember the 16th of December; 1872, I was in the employ of Hull & Co., in the Swamp; I remember the 16th of December; 1 leit hull & Co.'s about ten minutes to seven; I was sent to the Post Office with letters, and dropped my letters and went down Liberty street to go home; when I got; a couple of doors above Sutherland's I saw about two men standing looking at two men on the north side talking pretty load; one was a stont, well built; he was more skender and a little taller; it copyed and heard the stouter man say, "I will swear against yo;" the younger man said, "One't you pull snything on me;" then the younger man struck, and they both fell together; at tirst the elder man was underneath, but after a second or two be came uppermost and seemed to be making a motion as if poking him in the body; I ran to the corner to get an office; I urned back and saw the elder man get up and stagger, and somebody ran out of the restaurant and helped nim over; I ran back and climbed up on the rading outside of the restaurant and and helped nim over; I ran back and climbed up on the rading outside of the restaurant and saw the elder man in it, and were going to put the dead man in it, and were going to put the dead man in it, and were going to put the dead man in it; and were going to put the dead man in it; and were going to put the dead man in it; and were going to put the dead man in it; and were going to put the dead man in it; and were going to put the dead man in it; and were going to put the dead man in it; and were going to put the dead man in it; and were going to put the dead man in i

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